

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7708 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR (ULC)

Appearance:

Shri D.D. Vyas, Advocate, for the Petitioner
Shri A.G. Uraizee, Assistant Government Pleader,
for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 29/08/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) on 12th December 1991 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on

28th February 1995 in Appeal No. Ahmedabad-23 of 1992 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 3450 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed its declaration in the prescribed form under sec. 6(1) of the Act. It appears that, upon implementation of the town planning scheme in the area in question, the area of the land held by the petitioner came to be reduced. Thereupon the petitioner filed a fresh declaration in the prescribed form under sec. 6(1) of the Act with respect to the reduced area of the land. Its declaration was processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 12th December 1991 under sub-section (4) thereof, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 3450 square meters. Its copy is at Annexure I to this petition. The aggrieved petitioner carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-23 of 1992. By the order passed on 28th February 1995 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure J to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure I to this petition as affirmed in appeal by the appellate order at Annexure J to this petition.

3. Learned Advocate Shri Vyas for the petitioner is right in his submission that the constructed property should have been excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. Learned Assistant Government Pleader Shri Uraizee for the respondents has however urged that it has concurrently been found by the authorities below that the construction found on the land in question was not authorised. In that view of the matter, it has been urged by the learned Assistant Government Pleader for the respondents, the constructed area has rightly not been excluded from the holding of the petitioner.

4. Learned Assistant Government Pleader Shri Uraizee for the respondents informs me that an official from the

office of respondent No.1 is present with the record of the case. From its perusal it becomes clear that the petitioner had brought on record certain documentary evidence to show that the constructions standing thereon at the time of commencement of the Act were authorised.

5. It would be quite proper to look at certain facts appearing from the record. The dispute centres round one parcel of land bearing survey Nos. 154/1/2/A and 154/1/2/B reconstituted as Final Plot No. 160 in Town Planning Scheme No. 30 situated at Asarva (the disputed land for convenience). The petitioner appears to have purchased it some time in 1963. A copy of the sale deed is at Annexure D to this petition. It transpires from the record of the proceeding that a photocopy of the registered sale deed was produced before respondent No. 1 in the proceeding. It transpires therefrom that some superstructures were in existence at the relevant time. The sale deed is however silent as to what kind of construction was in existence on the date of execution of the sale deed. It however clearly transpires therefrom that some construction was in existence at the relevant time.

6. The petitioner tried to obtain from the Municipal Corporation of Ahmedabad copies of building permission granted for raising construction on the disputed land together with a copy of the approved plans in that regard. It appears that the Municipal Corporation of Ahmedabad expressed its inability to supply copies of the building permission and the approved plans with respect to the construction standing on the disputed land on the date of the aforesaid sale deed. That communication from the Municipal Corporation of Ahmedabad is on the record of the proceeding before respondent No. 1.

7. It is an admitted position on record that the disputed land is situated in Asarva within the urban agglomeration of Ahmedabad. It appears that in 1963 (the year of execution of the aforesaid sale deed) Asarva was not within the Municipal Corporation limits of Ahmedabad. It is possible that the construction in the disputed land was raised after obtaining the necessary building permission from the panchayat like local authority acting within that area. It is possible that on extension of the Municipal Corporation limits the panchayat record might have been handed over to the Municipal Corporation of Ahmedabad. The fact however remains that the local authority could not supply to the petitioner a copy of the building permission and a copy of the approved plans, if any.

8. It becomes clear from the record that the Municipal Corporation of Ahmedabad has taken no steps for demolition of the constructions found standing on the disputed land on the date of coming into force of the Act. The petitioner has also produced at Annexure F collectively various municipal tax bills for showing that the constructions standing on the disputed land was subjected to municipal taxation prior to coming into force of the Act. The petitioner has also produced before this Court at Annexure B collectively extracts from property register showing assessment inter alia of the superstructures standing on the disputed land at the relevant time. All these documents were also produced before respondent No.1 in the proceeding transpiring from the record thereof shown to me by and on behalf of the learned Assistant Government Pleader.

9. Respondent No. 1 has chosen to come to the conclusion that the construction raised on the disputed land was not authorised. I think that conclusion cannot be sustained in law. Inability on the part of the Municipal Corporation to supply a copy of the building permission and a copy of the approved plans, if any, should not result into disbelieving the petitioner's case that the construction standing on the disputed land on the date of coming into force of the Act was authorised. No law compels a party or a person to perform an impossibility. The petitioner could not have brought on record the building permission and the approved plans. It brought on record whatever material it could. In absence of the building permission and the approved plans, if any, the other material ought to have been carefully examined by respondent No. 1. As pointed out hereinabove, the constructed properties standing on the disputed land were subjected to municipal assessment for the purposes of property tax and no action was taken by the Municipal Corporation of Ahmedabad for demolition of the constructions in question. In that view of the matter, the constructions standing on the disputed land could be said to be not unauthorised. The contrary finding on the basis of the material on record can be said to be perverse.

10. It is true that some on-the-spot inspection was carried out while the declaration filed by the petitioner was under process. It was found that some school was being run in the disputed land. It was found that the school was of 38 classrooms and its construction was found to be somewhat new. That could not have certainly been included in the authorised construction in absence

of any cogent or convincing evidence. This would more particularly be in the context of what was declared by the petitioner in the declarations in the prescribed form under sec. 6(1) of the Act.

11. As pointed out hereinabove, the petitioner had filed two declarations in the prescribed form. The second declaration was after implementation of the town planning scheme resulting into reduction of the area. What was shown in that declaration as constructed area should have been taken to be authorised construction. The construction shown in the subsequent declaration does not include any school building or any classrooms of the school building. The authorised construction would be what was mentioned by the petitioner in the subsequent declaration after implementation of Town Planning Scheme No. 30 in the area. It transpires therefrom that the constructions included several separate dwelling units in separate buildings. Each separate dwelling unit will be entitled to separate additional land appurtenant in view of the ruling of this Court in the case of Jayaganri Gokaldas Bhavnagar and others v. State of Gujarat and another reported in 1994(1) Gujarat Current Decisions 871. This aspect of the case is obviously not considered by respondent No. 1.

12. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures I and J to this petition cannot be sustained in law. They have to be quashed and set aside. The matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

13. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 12th December 1991 at Annexure I to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 28th February 1995 in Appeal No. Ahmedabad-23 of 1992 at Annexure J to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
